

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MULTIFOLD INTERNATIONAL)
INCORPORATED PTE. LTD.,)
)
Plaintiff,) C.A. Nos. 23-1173-JLH
) 23-1323-JLH
v.)
)
MOTOROLA MOBILITY, LLC,)
)
Defendant.)

Friday, June 14, 2024
1:00 p.m.
Teleconference

844 King Street
Wilmington, Delaware

BEFORE: THE HONORABLE JENNIFER L. HALL
United States District Court Judge

APPEARANCES:

McCARTER & ENGLISH, LLP
BY: ALEXANDRA M. JOYCE, ESQ.

-and-

SCHULTE, ROTH & ZABEL, LLP
BY: SAUNAK K. DESAI, ESQ.

Counsel for the Plaintiff

1 APPEARANCES CONTINUED:

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RICHARDS, LAYTON & FINGER, P.A.

BY: SARA M. METZLER, ESQ.

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-and-

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ORRICK, HERRINGTON & SUTCLIFFE, LLP

BY: GERALD E. PORTER, ESQ.

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MORRIS, NICHOLS, ARSHT & TUNNELL, LLP

BY: BRIAN P. EGAN, ESQ.

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BY: ANDREW TRASK, ESQ.

BY: ADAM D. HARBER, ESQ.

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BY: EDWARD J. BENNETT, ESQ.

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Counsel for Google

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13:01:16 17

THE COURT: Hi. Good afternoon, everyone.

13:01:18 18

We're here on the line in two related cases for discovery;

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Multifold versus Motorola and Multifold v. Google. That's

13:01:29 20

civil action numbers 23-1173 and 23-1323.

13:01:37 21

Do we have somebody on the phone for plaintiffs?

13:01:40 22

MS. JOYCE: Good afternoon, Your Honor. This is

13:01:42 23

Alex Joyce from McCarter & English on behalf of plaintiffs

13:01:45 24

and I'm joined by Saunak Desai from Schulte, Roth & Zabel.

13:01:52 25

MR. DESAI: Good afternoon.

13:01:53 1 THE COURT: Good afternoon. And do we have
13:01:55 2 somebody for Google?

13:01:56 3 MR. EGAN: Good afternoon, Your Honor. This is
13:01:58 4 Brian Egan from Morris Nichols on behalf of Google. Joining
13:02:02 5 me today are Andrew Trask, Adam Harber and Ed Bennett from
13:02:06 6 Williams & Connolly.

13:02:10 7 THE COURT: Okay. And how about Motorola?

13:02:14 8 MS. METZLER: Good afternoon, Your Honor. This
13:02:17 9 is Sara Metzler from Richards, Layton & Finger on behalf of
13:02:19 10 Motorola. Joining me today is Gerald Porter from Orrick
13:02:25 11 can.

13:02:25 12 MR. PORTER: Good afternoon, Your Honor.

13:02:27 13 THE COURT: Good afternoon.

13:02:28 14 Okay. So we've looked at these letters. I
13:02:32 15 guess we'll hear from defendants first. And I guess the
13:02:37 16 main question I had is wouldn't this be better to just, once
13:02:44 17 you get the name OF who they want to use, to just have you
13:02:49 18 take a look and let us know if you think that person is a
13:02:53 19 concern and so we'll have something a little bit more
13:02:57 20 specific to go by whether or not youR proposal to have them
13:03:02 21 be on the hook for any violations is something that's
13:03:05 22 reasonable?

13:03:09 23 MR. TRASK: Good afternoon, Your Honor. This is
13:03:10 24 Andrew Trask from Williams & Connolly for Google and I'll be
13:03:15 25 presenting for defendants today.

13:03:16 1 So I understand Your Honor's question, which is
13:03:21 2 whether the kind of predisclosure provision under 7.5 of the
13:03:25 3 protective order is sufficient as to these individuals. And
13:03:29 4 our position is that it's not. Certainly it is important to
13:03:34 5 have disclosure of these temporary foreign nationals before
13:03:40 6 they're permitted to view what is defendants' most sensitive
13:03:43 7 business information, but reviewing a CV is insufficient to
13:03:46 8 understand whether or not there may be a protective order
13:03:50 9 violation down the line by one of these individuals. And as
13:03:53 10 we've explained in the letter brief, there is no recourse
13:03:57 11 for defendants should there be a protective order violation
13:04:01 12 once these individuals leave the country and are no longer
13:04:05 13 subject to the Court's jurisdiction.

13:04:07 14 So the pre-approval process that's built into
13:04:11 15 the protective order proposal is a step in the right
13:04:17 16 direction for defendants, but it doesn't resolve the
13:04:20 17 ultimate issue, which is that these are contractual source
13:04:23 18 code reviewers who are by definition in the United States on
13:04:26 19 a temporary basis and by definition will be leaving the
13:04:30 20 United States and leaving the Court's jurisdiction at some
13:04:33 21 future point in time. And the pre-approval process simply
13:04:40 22 doesn't inform defendants with sufficient definiteness of
13:04:43 23 whether or not there will be a protective order violation.
13:04:46 24 And of course, if there is, these are the only individuals
13:04:51 25 under the entire protective order who are contemplated to be

13:04:56 1 leaving the country and leaving the Court's jurisdiction.
13:04:59 2 So the fact that there would be a provision particular to
13:05:01 3 these types of individuals is not unreasonable. This is a
13:05:04 4 special category of individuals under the protective order
13:05:07 5 who plaintiff are seeking to show defendants' most sensitive
13:05:11 6 information to.

13:05:13 7 So hopefully that addresses Your Honor's
13:05:17 8 question on that point. But as we pointed out in the letter
13:05:21 9 briefs, it's not as if plaintiffs are left without any
13:05:25 10 ability to have individuals with trained technical
13:05:29 11 backgrounds review defendants' source code.

13:05:34 12 Of course Google understands that it has to
13:05:38 13 produce source code should it be ordered by the Court or
13:05:42 14 should the situation develop such that the source code is
13:05:46 15 responsive to defendants' requests and it's a reasonable
13:05:48 16 request under the rules. And if so, we will understand that
13:05:52 17 that source code can be reviewed by U.S. citizens, even by
13:05:57 18 foreign nationals. The terms of the order that Google has
13:06:02 19 proposed contemplates foreign nationals reviewing
13:06:06 20 defendants' source code, but only permanent resident foreign
13:06:10 21 nationals who are situated very differently from temporary
13:06:13 22 foreign nationals in that they are permanent residents of
13:06:18 23 the United States and will remain subject to the
13:06:20 24 jurisdiction of the Court.

13:06:21 25 So there are -- it's not as if defendants or

13:06:27 1 Multifold lacks the ability to review this source code.
13:06:29 2 They've acknowledged that there are U.S. citizens and
13:06:33 3 permanent foreign nationals who are employed by this source
13:06:36 4 code review company that they have hired to use, and they
13:06:40 5 haven't provided, frankly, a satisfactory explanation as to
13:06:45 6 whether those individuals can be used to review defendants'
13:06:48 7 source code, should such source code be produced.

13:06:53 8 And but regardless, I think the issue remains
13:06:56 9 that Multifold is just not willing to be responsible for
13:07:00 10 these protective order violations. I mean, they've
13:07:02 11 acknowledged that these are individuals with whom they have
13:07:04 12 no ongoing relationship, they're temporary consultants,
13:07:08 13 they'll be unaffiliated with Multifold following the
13:07:12 14 disclosure of source code, they're contemplated to be
13:07:15 15 leaving the country and there's just too great of a risk
13:07:19 16 with this case.

13:07:20 17 And one point I think that maybe didn't come out
13:07:23 18 in the letter briefing quite as clearly is that this case,
13:07:27 19 Your Honor, presents somewhat of an unusual scenario. As
13:07:32 20 Your Honor is aware, this is a large case, there are 16
13:07:35 21 asserted patents and there was a narrowing event a couple of
13:07:38 22 weeks ago where plaintiffs was required to reduce the number
13:07:43 23 of asserted claims, but even following that narrowing event,
13:07:46 24 plaintiffs have maintained that there should be 16 asserted
13:07:47 25 patents in this case and there are still a hundred claims

13:07:51 1 that have been asserted against Google. On top of that,
13:07:54 2 there are no claim charts attached to the complaint and the
13:07:59 3 allegations in the complaint are extremely vague and wide
13:08:03 4 ranging. So, for example, with respect to Google,
13:08:09 5 practically every phone that Google has ever made or sold is
13:08:13 6 accused in the complaint. And it's not just one aspect of
13:08:19 7 the phones, it's their screens, it's their chips, it's their
13:08:21 8 camera applications, it's the Youtube applications called
13:08:25 9 out in the complaint, various other unnamed applications are
13:08:28 10 called out in the complaint. So this is a large case with a
13:08:31 11 great degree of uncertainty as to what code is actually
13:08:35 12 going to be at issue in the case given where things
13:08:38 13 currently stand.

13:08:39 14 So of course plaintiff cited the Multifold, or
13:08:44 15 excuse me, the *Geoscope* case from the Eastern District of
13:08:48 16 Virginia where there was a protective order in place along
13:08:51 17 the lines of what plaintiffs want to use here, but that was
13:08:54 18 a vastly different case. There are only six patents at
13:08:57 19 issue here and not nearly the level of ambiguity as to what
13:08:59 20 would be at issue.

13:09:00 21 So to think of this from Google's perspective,
13:09:03 22 this is a case where there is a great deal of ambiguity as
13:09:05 23 to which products are accused, how discovery is going to
13:09:10 24 develop and ultimately should source code be produced, what
13:09:14 25 source code will be at issue. So the problem here is

13:09:16 1 magnified by the scope and ambiguity of plaintiff's
13:09:19 2 allegations in this case. So that's a concern here as well
13:09:25 3 with respect to the temporary foreign national issue.

13:09:28 4 The other thing that I wanted to point out to
13:09:32 5 Your Honor is Multifold's briefs cited two other cases from
13:09:37 6 Texas, the *Uniloc* and the *WSOU* cases and argued that Google
13:09:41 7 agreed to similar protective orders in those cases. That's
13:09:45 8 incorrect, in fact. Those are cases where Google, in fact,
13:09:50 9 sought a similar export control position just like it's
13:09:55 10 seeking in this case. Given the nature of the allegations
13:09:59 11 and given the scope of these cases and was simply that the
13:10:03 12 Texas courts declined to implement that provision. But it's
13:10:05 13 incorrect to say those were agreed-to provisions. They were
13:10:06 14 not. And Google advanced export control provisions similar
13:10:11 15 to the ones it's seeking to enter here.

13:10:15 16 And then finally, Your Honor, the plaintiffs
13:10:19 17 cited this case, the *S.I.SV.EL v. Rhapsody* case and argues
13:10:25 18 that it supports their position that one can't seek to
13:10:29 19 preclude foreign nationals from viewing sensitive
13:10:33 20 information, but that case, which is a case from this Court,
13:10:35 21 actually supports implementing this provision here. So the
13:10:38 22 reason that the export control provision was not adopted in
13:10:42 23 that case is because Judge Burke found that the provision
13:10:45 24 there, which would have barred the released source code to
13:10:49 25 any foreign national, even if within the United States, was

13:10:53 1 too restrictive.

13:10:54 2 That's not what Google is seeking here. As I
13:10:57 3 noted to Your Honor a few moments ago, Google acknowledges
13:11:01 4 that U.S. citizens and permanent U.S. resident foreign
13:11:06 5 nationals are eligible to view source code should it be
13:11:10 6 produced in this case. So the position here is simply that
13:11:13 7 the temporary foreign nationals present too great a risk
13:11:17 8 given the wide ranging nature of this case.

13:11:19 9 The *Cisco* case, it had a far broader ask, which
13:11:23 10 was to preclude foreign nationals all together, so that's a
13:11:26 11 distinguishable case. It also acknowledges citing a case
13:11:30 12 from Judge Stark, the *Graphics Properties v. Baseus* case,
13:11:34 13 the uncertainty about the ability to address the harm of
13:11:37 14 inadvertent disclosure if it occurs outside the jurisdiction
13:11:42 15 of the United States. That's a quote from the *Cisco* case
13:11:44 16 quoting the *Graphics Properties* case. That's exactly the
13:11:47 17 harm that Google is concerned about here, the inability to
13:11:52 18 address protective order violations should they occur
13:11:55 19 outside the United States with respect to temporary foreign
13:11:58 20 nationals.

13:11:59 21 So for all those reasons, Your Honor, Google
13:12:02 22 would ask that the protective order attached as Exhibit A to
13:12:07 23 its letter brief be entered. And then we noted in the brief
13:12:11 24 that's a protective order provision that is consistent with
13:12:14 25 the one entered by Your Honor in the *Samsung* -- in the

13:12:20 1 *Netlist/Samsung* case.

13:12:22 2 And if Your Honor decides that defendants'
13:12:25 3 source code can be viewed by temporary foreign nationals,
13:12:31 4 then the defendants request that the Court enter the
13:12:32 5 protective order attached as Exhibit B to the letter brief,
13:12:35 6 which would hold Multifold responsible for protective order
13:12:39 7 violations by its retained foreign nationals.

13:12:44 8 THE COURT: All right. Thanks very much. Let's
13:12:47 9 hear from the other side.

13:12:49 10 MR. DESAI: Good afternoon, Your Honor. This is
13:12:52 11 Saunak Desai on behalf of plaintiff Multifold.

13:12:54 12 Our position is that the defendants bear the
13:12:57 13 burden of showing why these restrictions are necessary both
13:13:00 14 to prevent foreign visa holders from being able to see
13:13:04 15 protected information entirely or to have this initial
13:13:09 16 liability provision, and they haven't met that burden
13:13:12 17 because the proposed restrictions are unnecessary, contrary
13:13:16 18 to the defendants' prior practice and they treat individuals
13:13:19 19 that would otherwise be authorized under the protective
13:13:23 20 order to see confidential information and have access to it
13:13:26 21 but differently based on their immigration status.

13:13:31 22 Your Honor started this with the question that I
13:13:34 23 think makes a lot of sense, which is rather than having a
13:13:39 24 categorical bar on these types of individuals from seeing
13:13:42 25 protected information, that it would make sense that there

13:13:46 1 are already agreed upon disclosure requirements. There's no
13:13:49 2 question that anyone that would receive access to this
13:13:51 3 information has to be identified, has to be approved by the
13:13:54 4 producing party and if there is an issue that comes up then,
13:14:00 5 then the parties can resolve that and seek intervention from
13:14:04 6 the Court if necessary at a later time. There's also a
13:14:06 7 number of other protections that are not in dispute.
13:14:09 8 There's no question here that any protected information
13:14:12 9 cannot leave the United States. That applies to everyone.
13:14:15 10 No one is allowed to view the protected information outside
13:14:18 11 the United States, with some limited exceptions to the
13:14:23 12 extent foreign depositions are necessary. These protections
13:14:27 13 are sufficient and they've been adopted in prior cases from
13:14:34 14 defendant that defendants have been a part have. So we had
13:14:37 15 pointed to *Geoscope* case where, again, involved the same
13:14:41 16 counsel involved here. Google was involved as well, and
13:14:45 17 there was no dispute about including the language that we
13:14:48 18 cited there in Exhibit 3 in paragraph 14 of Multifold's
13:14:53 19 brief where there was no issue that visa holders could see
13:14:58 20 protected information. And in fact, that language was even
13:15:02 21 broader. Multifold had agreed to narrow it a bit for this
13:15:06 22 case as well at defendants' request. Now, defendants will
13:15:09 23 now say that that case is different by making some
13:15:15 24 allegations about the vagueness of Multifold's allegations
13:15:18 25 here in this case and we don't agree that the allegations

13:15:22 1 are vague. But to be clear, those other Google cases that
13:15:25 2 we cited, including *Geoscope*, those include flagship Google
13:15:30 3 products. They related to Google location services and
13:15:33 4 Google Maps, and the other cases in which Google's counsel
13:15:36 5 said they didn't agree to not have the language, the *Uniloc*
13:15:42 6 case, but they were -- but actually the Court ordered that
13:15:45 7 protective order over their objections that did not have the
13:15:49 8 provisions they're seeking now, those also included flagship
13:15:52 9 Google products like Youtube and the code for underlying
13:15:56 10 Youtube. So there's not a distinction here based on the
13:15:59 11 technology at issue. And in all of these cases Google is
13:16:05 12 stringently trying to protect its protected information.
13:16:08 13 And there's no reasonable way to say that there was some
13:16:12 14 additional protections are necessary here because of the
13:16:15 15 number of patents or the allegations that are in the
13:16:19 16 complaint. That's untethered from what's actually necessary
13:16:23 17 in the protective order.

13:16:24 18 So we believe that those cases where Google had
13:16:29 19 already agreed to this language or if they didn't agree to
13:16:32 20 it were subject to this language without any identified
13:16:35 21 issue are -- show that this -- that there's no real risk to
13:16:41 22 defendants that would justify imposing the restrictions that
13:16:44 23 they seek here.

13:16:47 24 Separately, they raised a liability issue, but
13:16:51 25 to be clear here, they've suggested that Multifold doesn't

13:16:57 1 trust its reviewers because it doesn't believe that standing
13:17:03 2 in for liability, being on the hook for actions of those
13:17:05 3 reviewers shows that we don't trust them. To be clear,
13:17:08 4 trust is a separate issue from legal liability. Multifold
13:17:11 5 does trust its reviewers, but they are reviewers that are
13:17:17 6 retained for a temporary purpose here in litigating this
13:17:20 7 case, for one purpose and to have -- and the protective
13:17:24 8 order maintains confidentiality obligations even after the
13:17:28 9 final disposition of this case. So we don't believe that
13:17:31 10 having this sort of ill-defined and long lasting liability
13:17:35 11 for those actions really makes any sense. And in fact, just
13:17:39 12 a way to try to re strict the pool of experts that Multifold
13:17:44 13 can use.

13:17:48 14 So I'm happy to leave it there. If Your Honor
13:17:51 15 has any further questions, happy to dress them, but I
13:17:54 16 believe that ultimately defendants have not shown why this
13:17:58 17 category of individuals has to be treated per se differently
13:18:01 18 from the outset of this case.

13:18:05 19 THE COURT: All right. Thank you very much
13:18:06 20 counsel.

13:18:07 21 So I appreciate both sides' arguments. Both
13:18:11 22 sides' points are well taken.

13:18:13 23 I'll say at the outset, I'm not really sure that
13:18:18 24 there's ever going to be a dispute here. So but we're here
13:18:24 25 on the phone today, so I'll tell you what I'll tell you. I

13:18:27 1 took some notes while everyone was talking and I'll relay
13:18:32 2 those to you now.

13:18:33 3 Google's concerns about -- and Motorola's
13:18:37 4 concerns about the secrecy of source code are very well
13:18:40 5 taken by the Court. I appreciate that. And I appreciate
13:18:45 6 this type of evidence is the crown jewel of the company. I
13:18:50 7 also appreciate defendants' concerns about their ability to
13:18:55 8 enforce the protective order and to get redress for
13:19:01 9 violations of the protective order challenged if there's a
13:19:05 10 particular concern that an individual whose had access is
13:19:09 11 not going to be in the country anymore.

13:19:11 12 I'm not particularly persuaded by plaintiff's
13:19:16 13 argument that defendants should accept plaintiff's proposal
13:19:22 14 because the same parties or the same counsel have agreed to
13:19:26 15 this before. And I assume to be valid defendants' express
13:19:30 16 concerns about the types of technology and particular
13:19:36 17 concerns they might have about the source code that's going
13:19:42 18 to be disclosed in this case given the type of technology,
13:19:46 19 the number of patents asserted, the scope of the technology
13:19:50 20 covered by the patents and the number of accused products.

13:19:53 21 So all have that said, however, I have
13:19:55 22 discomfort about the categorization of experts proposed by
13:20:00 23 defendants. And I do think that we can address all of these
13:20:04 24 very valid and serious concerns that the defendants have by
13:20:09 25 utilizing the dispute resolution procedure that's set forth

13:20:14 1 in the portion of the protective order that everyone agrees
13:20:17 2 on, which is in Section 7.5. And maybe there won't be a
13:20:25 3 dispute and so we'll never have to use it, so we'll just
13:20:29 4 have to go forward and find out.

13:20:30 5 If defendants have a particular concern about an
13:20:33 6 expert either because they're only temporary in the United
13:20:37 7 States or there's some other concern that about this
13:20:44 8 expert's trustworthiness or ability to abide by the
13:20:48 9 protective order or foreign travel, the Court is certainly
13:20:51 10 not ruling out on the phone today that the Court can tell
13:20:58 11 plaintiff that the risk would be too great with this expert
13:21:00 12 and they need to find another expert. But I want to do that
13:21:04 13 with a record before me, so plaintiffs can argue that this
13:21:07 14 particular individual's got unique expertise and abilities
13:21:11 15 and they really need to use this individual or the defendant
13:21:14 16 can argue there's particular risk with this individual and
13:21:17 17 the Court can make a call. And maybe that call would be
13:21:21 18 that this expert can't have the information at all. Or
13:21:25 19 maybe the call would be that the expert can't have this
13:21:27 20 information at all unless plaintiffs agree to be responsible
13:21:31 21 for any violations. So that's something that I really want
13:21:34 22 to do on a case-by-case basis.

13:21:37 23 So I think you all understand what the basis for
13:21:41 24 my ruling is, but we will go with plaintiff's proposal on
13:21:46 25 this dispute.

13:21:48 1 While I have you all here on the phone, we
13:21:53 2 noticed when we were preparing for today's hearing that
13:21:57 3 there were pending motions on the docket and we got
13:22:01 4 ourselves into a position where we could resolve those for
13:22:05 5 you today. We could have just put a short oral order on the
13:22:09 6 docket, but we thought as long as we have you all here we
13:22:12 7 could put on the record in more detail the basis for our
13:22:15 8 rulings on these pending motions.

13:22:17 9 So the first motion I'll address is Defendant
13:22:22 10 Google's Motion to Dismiss. That's on the docket at D.I. 12
13:22:26 11 in case number 23-1323. That motion will be denied.

13:22:34 12 And I'll put on the record that this is a
13:22:37 13 partial motion to dismiss, so even if the Court fully
13:22:41 14 granted the motion, there would still be counts moving
13:22:44 15 forward. The complaint in the Google case has got 16 counts
13:22:48 16 and those correspond to 16 patents being asserted by
13:22:52 17 plaintiffs.

13:22:55 18 And so Google hasn't challenged, for example,
13:22:58 19 that the complaint states a claim of infringement (at least
13:23:01 20 direct and induced infringement) for counts 1 to 3, 9, and
13:23:05 21 13 to 16. So there's no basis to dismiss those counts in
13:23:10 22 their entirety.

13:23:11 23 With respect to counts 4 through 8 and 10
13:23:14 24 through 12 (which correspond to 8 different patents) Google
13:23:17 25 argues that the complaint fails to plausibly allege direct

13:23:22 1 infringement because it "largely parrots claim language and
13:23:26 2 alleges the bare conclusion that Google infringes without
13:23:30 3 providing the factual underpinning that the federal rules
13:23:30 4 require." I disagree with that argument.

13:23:32 5 As the Federal Circuit made clear in the *Nalco*
13:23:37 6 case, which is at 883 f.3d 1347, and again more recently in
13:23:43 7 the *Bot M8* case, 4 f.4th 1342, plaintiff does not have to
13:23:53 8 prove its case at the pleading stage. And there's no
13:23:56 9 requirement that the plaintiff plead facts establishing that
13:23:59 10 the each element of the asserted claim is met. Instead, the
13:24:02 11 complaint must merely place the potential infringer on
13:24:07 12 notice of what activity is being accused of infringement.

13:24:09 13 The complaint here in the Google case identifies
13:24:12 14 the patents, the accused products, and sufficient factual
13:24:16 15 support to put Google on notice of the activity that's being
13:24:19 16 accused of infringement. And I'll point in particular to
13:24:23 17 paragraphs 90, 94, 107, 116, 117, 130, 143, 154, 181, 194,
13:24:36 18 195, 208, 221, 222, 235, 236, 262, and 275, that cite
13:24:47 19 websites describing some of the accused products.

13:24:50 20 The complaint goes further and identifies, from
13:24:52 21 those webpages, in other paragraphs, certain alleged aspects
13:24:58 22 of the accused products that perform at least some of the
13:25:01 23 requirements of a representative claim for each patent, and
13:25:03 24 it alleges that use of the products perform all of the
13:25:06 25 elements of the claim and says what those elements are.

Google identifies Count 4 as exemplary of what it says is the sufficiency of the complaint, which is the failure to allege facts for each element of a representative claim.

However, again, the Federal Circuit has said that there is no formal requirement that the plaintiff plead facts establishing that each element of an asserted claim is met.

Even so, having reviewed the allegations as a whole, I think there is enough in there to put Google on notice about how the limitations that Google has identified is problematic are alleged to be met.

For example, Google says there's not enough in Count 4 to plausibly allege that the accused products display an overlay control that can be actuated which results in dismissal of the full screen mode. I disagree. The complaint alleges in paragraph 130 that an overlay control can be displayed by the device by a user pressing a screen and when the user presses the screen, it dismisses the full screen media. Google may dispute that its products have the claimed overlay control, but there is enough in the complaint to understand what the accused activity is. I've looked at the other limitations cited by Google for the other challenged counts and I reach the same conclusion as to those. Again, Google may dispute that its products have

13:26:31 1 those elements or that the use of its products meets those
13:26:35 2 method claim elements, but the complaint puts Google on
13:26:38 3 notice of what activity is being accused of infringement.

13:26:41 4 Google next says that the same count 4 through 8
13:26:44 5 and 10 through 12 fail to allege induced infringement for
13:26:48 6 the reason that they don't adequately allege direct
13:26:51 7 infringement; however, as I just stated, I do think they
13:26:54 8 adequately allege direct infringement.

13:26:57 9 Google next argues that none of the counts
13:26:59 10 adequately allege contributory infringement. But again,
13:27:03 11 that's not a basis to dismiss any of the counts, which also
13:27:07 12 allege direct and induced infringement, but the counts are
13:27:11 13 moving forward. Moreover, the complaint alleges that Google
13:27:14 14 sells components of the accused products that the complaint
13:27:18 15 adequately alleges are directly infringed. Under these
13:27:22 16 circumstances, that is enough. At this stage I'm not going
13:27:25 17 to cut out the contributory infringement allegations from
13:27:28 18 the case at this pleading stage.

13:27:30 19 And to require anything more at this stage with
13:27:34 20 respect to the infringement allegations would require the
13:27:36 21 equivalent of infringement contentions, which is more than
13:27:40 22 the law demands.

13:27:41 23 And so Google's motion will be denied. I will
13:27:44 24 note, though, that we have a scheduling order already
13:27:50 25 entered in this case that requires plaintiff to provide its

13:27:53 1 initial infringement contentions in the form of claim charts
13:27:55 2 less than two months from now. And as plaintiff itself
13:27:59 3 admits, these are not complicated claims, so plaintiff
13:28:03 4 should be able to explain what its infringement theories are
13:28:05 5 in those claim charts. If plaintiff doesn't have a theory
13:28:10 6 or has a frivolous theory and plaintiff is using that theory
13:28:11 7 or non theory to try to get more discovery than it would
13:28:15 8 otherwise be entitled to get, the Court will address that at
13:28:18 9 the appropriate time.

13:28:19 10 Turning next to Motorola's pending motion to
13:28:23 11 dismiss. That's at document 10 in 23-1173.

13:28:30 12 Motorola argues that "every claim on every
13:28:33 13 infringement theory - direct, contradictory, induced, and
13:28:36 14 willful - represent just a type of 'threadbare recitals of
13:28:42 15 the elements of a cause of action, supported by mere
13:28:46 16 conclusory statements' precluded by Iqbal Twonbley." I
13:28:50 17 disagree.

13:28:51 18 Here again, plaintiffs identify its patents,
13:28:56 19 accused products and sufficient factual support to put
13:28:58 20 Motorola on notice of the activities being accused of
13:29:02 21 infringement.

13:29:02 22 As in the Google complaint, plaintiff cited a
13:29:05 23 number of webpages disclosing several limitations. I won't
13:29:09 24 cite them all, but they include paragraphs 94 and 98, 120,
13:29:14 25 and others.

1 Like the Google complaint, the Motorola
2 complaint goes further and, each count when read as a whole,
3 adequately identifies certain alleged features of the
4 accused product that perform at least some of the
5 requirements of a representative claim, and the complaint
6 also alleges that use of the products perform all of the
7 elements of the claim (and it sets forth what all of those
8 elements are).

9 Requiring anything more at this stage, again,
10 would be essentially requiring infringement contentions
11 which aren't required at the motion to dismiss stage.

12 Motorola next argues that the direct
13 infringement allegations based on method claims should be
14 dismissed because you can only directly infringe a method
15 claim by performing the method, not by selling a product
16 that can perform the method.

17 And that's an accurate statement of the law. I
18 don't think anyone disputes that, but that is not a basis to
19 dismiss the count here, because, for one thing, each count
20 alleges that Motorola has directly infringed by itself
21 performing the claimed method and that it induces others to
22 infringe. The Court is not going to parse out various
23 theories at this stage under these circumstances.

24 Motorola argues that the Court should separately
25 dismiss the allegations for contributory, induced and

13:30:36 1 willful infringement.

13:30:37 2 With respect to contributory infringement,
13:30:39 3 Motorola makes essentially the same argument as Google, and
13:30:43 4 I also reject that for the same reason.

13:30:46 5 With respect to induced infringement, Motorola
13:30:51 6 says that the complaint fails to allege specific intent.
13:30:51 7 The gist of its argument here is that there's not enough
13:30:56 8 connecting the alleged direct infringement by the customer
13:30:56 9 to an action taken by Motorola. I disagree under these
13:31:01 10 circumstances.

13:31:01 11 Given the nature of the allegations, which is
13:31:05 12 that the accused products have certain functionality that
13:31:08 13 infringes when it's used by the customer, the complaint's
13:31:12 14 allegation that Motorola sells the products and provides
13:31:15 15 instructions and support on how to use them is enough.

13:31:19 16 Finally, Motorola argues that "the willful
13:31:22 17 infringement claim should be dismissed because the complaint
13:31:25 18 fails to allege any sufficiently egregious acts" beyond
13:31:29 19 typical infringement.

13:31:31 20 At this stage of a patent case, and in
13:31:34 21 particular this case with the record before the court, it
13:31:37 22 would be inappropriate for the Court to determine whether
13:31:39 23 this is merely a typical infringement or an egregious
13:31:44 24 infringement. So I'm not going to dismiss any counts or
13:31:47 25 strike any theories on that basis.

13:31:49 1 And that concludes my rules on those two pending
13:31:52 2 motions.

13:31:53 3 I hope everyone has a great weekend. Bye bye.

13:31:58 4 (Court adjourned at 1:31 p.m.)

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I hereby certify the foregoing is a true and
accurate transcript from my stenographic notes in the
proceedings.

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/s/ Stacy M. Ingram, RPR
Official Court Reporter
U.S. District Court

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